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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,288	02/08/2001	George A. Huff JR.	37,248-03	6599

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EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/779,288	Applicant(s) HUFF ET AL.	
	Examiner Cephia D. Toomer	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8,11-13 and 24-27 is/are pending in the application.
4a) Of the above claim(s) 15-22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 is/are allowed.
- 6) ☒ Claim(s) 8,11-13,24,26 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 19, 2004 has been entered.
2. This Office action is in response to the amendment filed April 19, 2004 in which claims 3-5 and 23 were canceled. Claims 24-27 were amended. It should be noted that claims 15 and 22 are withdrawn. The listing of the claims does not include the text of all the withdrawn claims.
3. The rejection of the claims under 35 USC 112 second paragraph is withdrawn in view of the amendment to the claims.
4. The 102(b) rejection over EP 905217 and Berlowitz (US 5,807,413) in view of Applicant canceling the claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wittenbrink (US 5,807,413).

Wittenbrink teaches a fuel composition comprising greater than 85% n-paraffins of 5-15 carbon atoms. The composition also contains small amounts of alcohol, preferably 50-5000 wppm as oxygen (see col. 1, lines 25-46). Examples 1 and 2 of Wittenbrink meet the limitation regarding the IBP of the composition and distillates, sulfur content and flash point (Table 3).

Wittenbrink fails to teach that the predominant compound organic distillates are derived from natural petroleum. However, product-by-process language is limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Wittenbrink teaches Fischer-Tropsch organic distillates that comprise greater than 85% n-paraffins.

7. Claims 11-13 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittenbrink in view of Taylor (US 4,723,963).

Wittenbrink has been discussed above. Wittenbrink fails to teach a fuel composition comprising cyclic benzylic ketones. However, Taylor teaches this difference.

Taylor teaches a middle distillate fuel composition comprising oxygenated compounds such as alcohols and ketones (see col. 3, lines 5-9; col. 5, lines 22-25). The ketones include α -tetralone (see Table I).

It would have been obvious to one of ordinary skill in the art to have replaced the alcohols of Wittenbrink with the cyclic benzylic ketone of Taylor because Taylor teaches that the alcohols of Wittenbrink and the cyclic benzylic ketones are art recognized equivalents.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wittenbrink as applied to the claims above, and further in view of Davies (US 6,010,545).

Wittenbrink has been discussed above. Wittenbrink fails to teach that his composition contains a cold flow improver. However, Davies teaches this difference. Davies teaches that low sulfur middle distillate fuels contain co-additives such as ethylene-vinyl acetate copolymers (see abstract; col. 6, lines 33-35; col. 8, lines 9-30).

It would have been obvious to one of ordinary skill in the art to have included a cold flow improver in the fuel composition because Davies shows that it is conventional to add cold flow improvers to middle distillate fuels to ensure that the fuel will flow in cold weather conditions.

9. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that Wittenbrink (Berlowitz) fails to teach the claimed composition because Wittenbrink is derived from Fischer-Tropsch synthesis, whereas the distillates of the present invention are derived from natural petroleum.

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Both processes produce distillate products that contain greater than 85% n-paraffins. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

10. Claim 25 is allowable because the prior art fails to teach or suggest a fuel composition comprising the claimed aryl oxygenates.

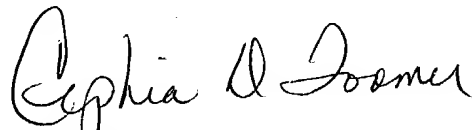
11. Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art fails to teach or suggest the claimed aryl oxygenates.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cephia D. Toomer
Primary Examiner
Art Unit 1714

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